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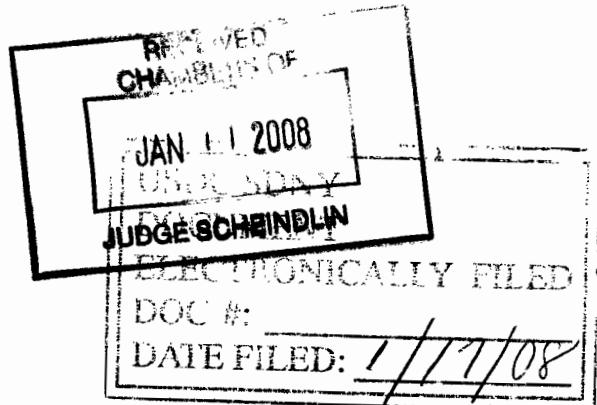
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January 11, 2008

Via Facsimile

The Honorable Shira A. Scheindlin
 United States District Court
 Southern District of New York
 500 Pearl Street, Room 1620
 New York, New York 10007



Re: Anderson v. The State of New York, et al., 07 Civ. 9599 (SAS)

Dear Judge Scheindlin:

I represent the plaintiff in the above-referenced matter and write with respect to plaintiff's Second Amended Complaint, timely filed via the Court's ECF system on January 9, 2008, and manually re-filed on paper with the Clerk's Office today, January 11, 2008.

Pursuant to the Court's January 7, 2008 order, plaintiff's deadline for filing her Second Amended Complaint was January 9, 2008. According to the USDC/SDNY's 3rd Amended Instructions for Filing an Electronic Case or Appeal, the initiating summons and complaint and affidavits of service are to be filed on paper, and "[a]ll subsequent documents, including the Defendant's Answer, must be filed electronically on the ECF system." (Instructions ¶¶ (1), (4), and (5).) Relying on these instructions, plaintiff timely filed her Second Amended Complaint via the ECF system (although the document was incorrectly registered as a Motion to Amend/Correct the Complaint). Immediately following this electronic filing, an email was delivered to counsel for both parties attaching a copy of plaintiff's Second Amended Complaint. Defense counsel therefore received a copy of plaintiff's Second Amended Complaint on January 9, 2008.

Plaintiff was later directed by Clerk's Office to manually re-file her Second Amended Complaint, which she has done. In a telephone conversation with the ECF Help Desk, a representative informed me that because the document had already been electronically filed on January 9th, it would be considered filed on that date. This representative also advised that although amended complaints must be filed manually, this requirement is written nowhere in the instructions for electronic filing; she stated that the instructions are presently being amended but have yet to be completed or distributed. As a result of the foregoing, plaintiff respectfully requests that Your Honor also consider plaintiff's Second Amended Complaint timely filed, nunc pro tunc, on January 9, 2008.

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Finally, as a separate matter, I am constrained bring to the Court's attention action taken by defense counsel, Lee Alan Adlerstein, Esq., that I found extremely troubling. On January 9, 2008, Mr. Adlerstein faxed another copy of a proposed scheduling order to the Court, with a copy to me. Although that proposed scheduling order purported to be submitted on behalf of both parties (as it states "the parties hereby submit..."), it was submitted without plaintiff's knowledge or consent – and was different from the proposed scheduling order to which the parties had jointly agreed and submitted to the Court on January 4, 2008. The document to which we jointly agreed contained language that I had specifically requested. However, that language was deleted from the scheduling order that Mr. Adlerstein faxed to the Court on January 9th, without plaintiff's knowledge or consent. Mr. Adlerstein's actions are highly disturbing, as this was a document purporting to be jointly submitted on behalf of both parties.

While the Court has already "So Ordered" the scheduling order in this case, and plaintiff has no objection to the dates enforced, I am compelled to advise the Court of counsel's conduct, and to request that, in the future, Mr. Adlerstein refrain from submitting anything to the Court purportedly on plaintiff's behalf without first obtaining plaintiff's consent.¹

Respectfully submitted,



Tembani S. Xaba

cc: Lee Alan Adlerstein, Esq. (via facsimile at 212-416-6009)

Plaintiff's request is
granted. Plaintiff's
Second Amended Complaint
is considered to be timely
filed *nunc pro tunc* on
Jan. 9, 2008.

¹ In the event that Mr. Adlerstein sent the January 9, 2008 to the Court at its request for a duplicate copy of the proposed joint order previously submitted, Mr. Adlerstein is advised, in the future, to exercise a modicum of care to ensure that the correct document is actually submitted.

Date: Jan. 15, 2008

SO ORDERED:

Shira A. Scheindlin, USDJ